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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

Nos. 694, 707

UNITED STATES, ET AL.

v.

DIXIE HIGHWAY EXPRESS, INC., ET AL.

Memorandum of Dixie Highway Express, Inc., and Jack Cole Company in Response to Jurisdictional Statements

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Attorney for
Dixie Highway Express, Inc.,
and Jack Cole Company

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Dixie Highway Express, Inc., and Jack Cole Company deem it advisable to confine their participation in this proceeding to the filing of this memorandum in response to the jurisdictional statements filed herein.

This is a direct appeal from the final judgment of a three-judge court setting aside an order of the In-

terstate Commerce Commission approving the application of Braswell Motor Freight Lines, Inc., to extend its motor carrier operations. Dixie Highway Express, Inc., and Jack Cole Company, together with other motor carriers, were protestants before the Commission and plaintiffs in the court below.

Dixie Highway Express, Inc., and Jack Cole Company are now in extreme financial distress. Their current liabilities exceed their current assets by over $1,800,000, and default has been made in obligations to the United States and other creditors amounting to over $2,596,000. As a result of this situation and subsequent to the lower court's decision, the stockholders have sold all of the capital stock of said companies to Robert E. Short, who has received temporary authority from the Interstate Commerce Commission, under section 210(b) of the Interstate Commerce Act [49 U.S.C. § 310(b)], to operate the properties temporarily, pending determination of an application under section 5(2) of the Act [49 U.S.C. § 5(2)]. Under this temporary authority, the vendee has assumed temporary control and operation of the companies and, in consonance with the purpose of the authorization by the Commission for temporary control and operation, is endeavoring to preserve the properties and restore their financial health.

In addition, Dixie Highway Express, Inc., and Jack Cole Company believe that the court below erred to the extent that its *per curiam* opinion states:

> "The invariable rule of the Commission is and has been for a long time that no certificate affecting the area of another carrier will be issued until that other carrier has been furnished an opportunity either to improve or correct his service to

such route or decide whether he wishes to or can furnish the added service sought by the applicant carrier."

Accordingly, neither Dixie Highway Express, Inc., nor Jack Cole Company desires to participate further in this proceeding.

Respectfully submitted,

ROBERT E. SHORT
Attorney for
Dixie Highway Express, Inc.,
and Jack Cole Company

Proof of Service.

I, Robert E. Short, attorney for the Dixie Highway Express, Inc. and Jack Cole Company, two of the appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 27th day of October, 1967, I served copies of the foregoing Memorandum In Response To Jurisdictional Statements on the several parties to this action, as follows:

1. On the United States, by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Robert E. Hauberg, United States Attorney, Jackson, Mississippi 39202; and with first-class postage prepaid, to Honorable Ralph S. Spritzer, the Acting Solicitor General, Department of Justice, Washington, D. C. 20530, to Honorable Donald F. Turner, Assistant Attorney General, Department of Justice, Washington, D. C. 20530, and to John H. D. Wigger, Esq., Antitrust Division, Department of Justice, Washington, D. C. 20530.

2. On the Interstate Commerce Commission, by mailing copies thereof, in duly addressed envelopes, with first-class postage prepaid, to Robert W. Ginnane, General Counsel, Interstate Commerce Commission, Washington, D. C. 20423, to Fritz R. Kahn, Assistant General Counsel, Interstate Commerce Commission, Washington, D. C. 20423, to Leonard S. Goodman, Assistant General Counsel, Interstate Commerce Commission, Washington, D. C. 20423, and to Betty Jo Christian, Attorney, Interstate Commerce Commission, Washington, D. C. 20423.

3. On Appellant Braswell Motor Freight Lines, Inc., by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Rubel L. Phillips, Esq., Overstreet, Keykendall, Perry & Phillips, 829 Deposit Guaranty Bank Building, Jackson, Mississippi 39201, to Bob Fleming, Esq., P. O. Box 1966, Fort Worth, Texas 76101; and to M. Ward Bailey, Esq. and T. S. Christopher, Esq., Christopher & Bailey, 2412 Continental Life Building, Fort Worth, Texas 76102.

4. On the plaintiffs herein, by mailing copies thereof, in duly addressed envelopes, with air mail postage prepaid, to Phineas Stevens, Esq., Butler, Snow, O'Mara, Stevens & Cannada, 700 Petroleum Building, Jackson, Mississippi 39201; to R. J. Reynolds, Jr., Esq., and R. J. Reynolds III, Esq., Reynolds and Reynolds, 403 Healey Building, Atlanta, Georgia 30303; to James W. Wrape, Esq. and Robert E. Joyner, Esq., Wrape & Hernley, 2111 Sterick Building, Memphis, Tennessee 38103; to Guy H. Postell, Esq., Monty T. Schumacher, Esq. and Frank Hall, Esq., 1375 Peachtree Street, N. E., Atlanta, Georgia 30309; to Bates Block, Esq. and Allen Post, Esq., Hansell, Post, Brandon & Dorsey, 600 First National Bank Building, Atlanta, Georgia 30303; to Wentworth Griffin, Esq., Reeder, Griffin, Dysart & Taylor, 1221 Baltimore Avenue, Kansas City, Missouri 64015; to Frank M. Garrison, Esq., P.O. Box 1120, Lubbock, Texas 77008; to W. D. Benson, Jr., Esq., 9th Floor, Citizens Tower, Citizens National Bank Building, Lubbock, Texas 77001; to Maurice F. Bishop, Esq. and John P. Carlton, Esq., Bishop & Carlton, 327 Frank Nelson Building, Birmingham, Alabama 35203; to Dudley W. Conner, Esq., Conner Building, Hattiesburg, Mississippi 39401; and to James W. Nisbet, Esq. and Ed White, Esq., 280 Union Station Building, Chicago, Illinois 60606; and with first-class postage prepaid to James J. Williams, Esq., 1025 Connecticut Avenue, N.W., Washington, D. C. 20036; to William O. Turney, Esq. and Anthony C. Vance, Esq., Turney, Major & Sage, 2001 Massachusetts Avenue, N. W., Washington, D. C. 20036, and to Drew L. Carraway, Esq. and John S. Fessenden, Esq., Rice, Carpenter & Carraway, 618 Perpetual Building, Washington, D. C. 20004.

This 27th day of October 1967.

ROBERT E. SHORT
Attorney for
Dixie Highway Express, Inc.,
and Jack Cole Company